

REMARKS

This is a full and timely response to the outstanding final Office Action mailed July 31, 2002. Reconsideration and allowance of the application and presently pending claims, as amended, are respectfully requested.

1. Present Status of Patent Application

Upon entry of the amendments in this response, claims 1-7, 9-19, and 21-24 remain pending in the present application. It is believed that newly added claims 22-24 add no new matter to the present application.

2. Response to Drawing Objection

A new set of formal drawings is being submitted herewith. It is believed that the new drawings correct the informalities cited in "Notice of Draft Person's Patent Drawing Review," PTO-948. In addition, the new drawings incorporate the amendments that were approved by the Examiner in the Office Action.

3. Response to Rejection of Claim 21 under 35 U.S.C. 112, First Paragraph

Claim 21 has been rejected under 35 U.S.C. 112, First Paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The Office Action states "neither in the claim nor the specification is it explained how or why an frequency modulated signal is further modulated, as no conventional receivers perform this function . . . and hence is not enabling to one skilled in the art." Applicant respectfully traverses this rejection.

Applicants respectfully submit that the subject matter of claim 21 is sufficiently described in the specification as required by 35 U.S.C. 112, First Paragraph. Applicant's specification clearly shows sufficient support for broadcasting analog information on FM and AM frequency bands, as recited in claim 21. For example, Applicant's disclosure states, "transmitter 220 is shown as transmitting on three frequencies, f1, f2 and f3 to each of three radios, 130, 140 and 150 respectively. Clearly, more or fewer transmission frequencies can be utilized." Page 5, lines 24-26. Further, the specification states that the available frequency ranges includes FM and AM. Page 5-6, lines 31-1. Therefore, the step of "broadcasting the analog information in a localized area in at least one preselected frequency modulated radio frequency," as recited in claim 17, is sufficiently supported by the specification. In addition, the feature "wherein the step of broadcasting the analog information is in at least one preselected amplitude modulated radio frequency," as recited in claim 21, which depends from claim 17, is also sufficiently supported by the specification, since information may be broadcasted in AM and FM frequency bands. Accordingly, the rejection of claim 21 is improper and should be withdrawn.

4. Response to Rejection of Claims 1, 4, 9, 10, 11, 13, and 17 Under 35 U.S.C. § 103(a)

Claims 1, 4, 9, 10, 11, 13, and 17 have been rejected under 35 U.S.C. § 103(a) as being purportedly unpatentable over *Boys* (U.S. Patent No. 6,314, 094). It is well established at law that, for a proper rejection of a claim under 35 U.S.C. § 103 as being obvious based upon prior art, the prior art must disclose, teach, or suggest, either implicitly, all elements/features/steps of the claim at issue. See, e.g., *In re Dow Chemical*, 5 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1988); *In re Keller*, 208 U.S.P.Q.2d 871, 881 (C.C.P.A. 1981).

a. Claim 1

As provided in independent claim 1, Applicant claims:

1. A method for receiving digital information and transmitting the information in a localized area, comprising the steps of:
receiving an audio communication as digital information from a remote source via the Internet;
converting the digital information to analog information;
broadcasting the analog information at low power in a localized area in at least one preselected radio frequency; and
receiving the broadcast information in the localized area on a radio frequency receiver tuned to at least one frequency to permit listening to the audio communication.

(emphasis added).

Applicant asserts that the rejection is improper because the cited prior art fails to disclose or otherwise teach the features emphasized above. As provided above, Applicant's independent claim 1 recites the step for broadcasting analog information in a localized area. In the specification, a localized area is described as a short distance where radio signals may be transmitted without a FCC or local license requirement, page 5, lines 20-21, such as a user's home. Page 2, lines 28-29. The *Boys* reference would not result in the claimed system for at least the reason that the communication approach in *Boys* does not "broadcast[] the analog information at low power in a localized area in at least one preselected radio frequency," as recited in claim 1. Rather, *Boys* suggests using cellular communications, *see* col. 4, lines 58-62, which requires FCC licensing to transmit signals in a cell or region 15, 17. Accordingly, the size of the cell or region 15, 17 in the *Boys* reference is not limited to a "localized area," as delineated in the specification. Therefore, the rejection of claim 1 is improper and should be withdrawn.

b. Claim 4

Irrespective of the clear lack of motivation to combine the prior art references, Applicant

asserts that the rejection is improper because independent claim 1 is allowable over the prior art of record, and therefore, dependent claim 4 (which depends from independent claim 1) is allowable as a matter of law for at least the reason that dependent claim 4 contains all the steps/features of independent claim 1. *See In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988).

Additionally and notwithstanding the foregoing reasons for allowability of independent claim 1, dependent claim 4 recites further steps and/or combinations of steps (as is apparent by examination of the claim itself) that are patentably distinct from the prior art of record. Specifically, the feature “wherein the step of broadcasting the analog information comprises broadcasting at a power level less than about 100 milliwatts,” as recited in claim 4, is not taught, disclosed, or suggested by *Boys*. Regarding the rejection, the Office Action states that “[i]t would have been obvious to use a very low power, since the applicant has not disclosed that a power level less than about 100 milliwatts solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with a much lower power to obtain local transmission.” The Applicant respectfully disagrees, since the specification states that low power transmission (less than about 100 milliwatts) is desirable because it does not require a FCC license, page 5, lines 18-21, and can be received in a localized area, as recited in claim 1. *Boys*, on the other hand, teaches the use of cellular communications which is governed by the FCC. *See* col. 4, lines 57-62. Therefore, claim 4 is not obvious under the prior art of *Boys*, and the rejection should be withdrawn.

c. Claims 9-10

Applicant asserts that the rejection is improper because independent claim 1 is allowable over the prior art of record, and therefore, dependent claims 9-10 (which depend from independent

claim 1) are allowable as a matter of law for at least the reason that dependent claims 9-10 contain all the steps/features of independent claim 1. Accordingly, the rejection of claims 9-10 is improper and should be withdrawn.

d. Claim 11

As provided in independent claim 11, Applicant claims:

11. An apparatus for receiving information and broadcasting the information in a localized area, the apparatus comprising:
means for receiving digital information from a remote source via the Internet;
means for converting the digital information to analog information;
and
means for broadcasting the analog information in a localized area in at least one preselected radio frequency.

(emphasis added).

Applicant respectfully submits that the rejection is improper because the cited prior art fails to disclose or otherwise teach the features emphasized above. As provided above, Applicant's independent claim 11 recites the element of means for broadcasting analog information in a localized area. In the specification, a localized area is described as a short distance where radio signals may be transmitted without a FCC or local license requirement, such as a user's home. See page 2, lines 20-21, 28-29. Hence, the *Boys* reference would not result in the claimed system for at least the reason that the communication system in *Boys* does not "broadcast[] the analog information at low power in a localized area in at least one preselected radio frequency," as recited in claim 11. Rather, *Boys* suggests using cellular communications, see col. 4, lines 58-62, which requires FCC licensing to transmit signals in a cell or region 15, 17. Accordingly, the size of the

cell or region 15, 17 in the *Boys* reference is not limited to a “localized area,” as delineated in the specification. Therefore, the rejection of claim 11 is improper and should be withdrawn.

e. Claim 13

Applicant asserts that the rejection is improper because independent claim 11 is allowable over the prior art of record, and therefore, dependent claim 13 (which depends from independent claim 11) is allowable as a matter of law for at least the reason that dependent claim 13 contains all the elements/features of independent claim 11. Accordingly, the rejection of claim 13 is improper and should be withdrawn.

f. Claim 17

As provided in independent claim 17, Applicant claims:

17. A method for receiving digital information and transmitting the information in a localized area, the system comprising:
receiving digital information from a remote source via the Internet;
converting the digital information to analog information;
broadcasting the analog information in a localized area in at least one preselected frequency modulated radio frequency.
(emphasis added).

Applicant respectfully submits that the rejection is improper because the cited prior art fails to disclose or otherwise teach the features emphasized above. As provided above, Applicant's independent claim 17 recites the step of broadcasting analog information in a localized area. In the specification, a localized area is described as a short distance where radio signals may be transmitted without a FCC or local license requirement, such as a user's home. *See* page 2, lines 20-21, 28-29. Therefore, the *Boys* reference would not result in the claimed method for at least the reason that the communication approach in *Boys* does not “broadcast[] the analog information at

low power in a localized area in at least one preselected radio frequency,” as recited in claim 17. Rather, *Boys* suggests using cellular communications, *see* col. 4, lines 58-62, which requires FCC licensing to transmit signals in a cell or region 15, 17. Accordingly, the size of the cell or region 15, 17 in the *Boys* reference is not limited to a “localized area,” as delineated in the specification. Therefore, the rejection of claim 17 is improper and should be withdrawn.

5. Response to Rejection of Claims 2-3, 5-7, 12, 16, 18, and 21 Under 35 U.S.C. § 103(a)

Claims 2-3, 5-7, 12, 16, 18, and 21 have been rejected under 35 U.S.C. § 103(a) as being purportedly unpatentable over *Boys* in view of *Lowe* (U.S. Patent No. 6,298,218). It is well established at law that, for a proper rejection of a claim under 35 U.S.C. § 103 as being obvious based upon a combination of references, the cited combination of references must disclose, teach, or suggest, either implicitly, all elements/features/steps of the claim at issue. *See, e.g., In re Dow Chemical*, 5 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1988); *In re Keller*, 208 U.S.P.Q.2d 871, 881 (C.C.P.A. 1981).

a. Claim 2

Irrespective of the clear lack of motivation to combine the prior art references, Applicant asserts that the rejection is improper because independent claim 1 is allowable over the prior art of record, and therefore, dependent claim 2 (which depends from independent claim 1) is allowable as a matter of law for at least the reason that dependent claim 2 contains all the elements/features of independent claim 1. Accordingly, the rejection of claim 2 is improper and should be withdrawn.

b. Claim 3

Applicant asserts that the rejection is improper because independent claim 1 is allowable over the prior art of record, and therefore, dependent claim 3 (which depends from independent claim 1) is allowable as a matter of law for at least the reason that dependent claim 3 contains all the elements/features of independent claim 1. *See In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988). Additionally and notwithstanding the foregoing reasons for allowability of independent claim 1, dependent claim 3 recites further features and/or combinations of features (as is apparent by examination of the claim itself) that are patentably distinct from the prior art of record.

The feature “wherein the broadcasting comprises broadcasting in a radio frequency modulated waveband in the ranges of from about 88 MHz to about 108 MHz and from about 540 Khz to about 1.6 MHz,” as recited in claim 3, is not disclosed, taught, or suggested by either *Boys* or *Lowe*. Accordingly, the *Boys/Lowe* combination would not result in the claimed system. Furthermore, both references teach away from broadcasting information using commercial frequency bands, such as FM or AM, for their respective systems. For example, *Lowe* specifically states that the “[u]se of the FM band outside the commercial (88-108 MHz) range is contemplated herein so as to avoid the possibility of commercial FM radio band interference.” Col. 7, lines 1-3. Likewise, *Boys* apparently contemplates utilizing AM/FM receiving capability in order to receive conventional broadcasts and not Internet broadcasts. Col. 13, lines 45-48. Hence, the *Boys/Lowe* combination simply would not result in Applicant’s claimed invention.

For a proper rejection under 35 U.S.C. § 103, both the suggestion to combine the combination of references and the expectation of success of the combination must be found in the prior art, not in the Applicant's disclosure. *See In re Dow Chemical Co.*, 837 F.2d 469, 473,

5 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1988). There is no suggestion anywhere in the prior art of record to combine the teachings of these two references. Simply put, the Official Action has used Applicant's disclosure as a template or instruction manual to combine the references in order to fabricate the combination. Accordingly, the rejection of claim 3 is improper and should be withdrawn.

c. Claim 5

Applicant asserts that the rejection is improper because independent claim 1 is allowable over the prior art of record, and therefore, dependent claim 5 (which depends from independent claim 1) is allowable as a matter of law for at least the reason that the dependent claim 5 contains all the steps/features of independent claim 1. *See In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988). Additionally and notwithstanding the foregoing reasons for allowability of independent claim 1, dependent claim 5 recites further features and/or combinations of features (as is apparent by examination of the claim itself) that are patentably distinct from the prior art of record.

The feature "wherein the broadcasting of the analog information is initiated at a predetermined time and in a predetermined frequency," as recited in claim 5, is not disclosed, taught, or suggested by either *Boys* or *Lowe*. Accordingly, the *Boys/Lowe* combination would not result in the claimed system. The *Lowe* reference instead teaches that the user's presence triggers the transmission of information to a user's headset or video display. *See* col. 3, lines 9-13; col. 4. lines 54-61. Accordingly, *Lowe* fails to suggest, disclose, or teach the feature of initiating broadcasting at a predetermined time. Hence, the *Boys/Lowe* combination simply would not result in Applicant's claimed invention. Accordingly, the rejection of claim 5 is

improper and should be withdrawn.

d. Claim 6

Applicant asserts that the rejection is improper because independent claim 1 is allowable over the prior art of record, and therefore, dependent claim 6 (which depends from independent claim 1) is allowable as a matter of law for at least the reason that dependent claim 6 contains all the steps/features of independent claim 1. *See In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988). Accordingly, the rejection of claim 6 is improper and should be withdrawn.

e. Claim 7

Applicant asserts that the rejection is improper because independent claim 1 is allowable over the prior art of record, and therefore, dependent claim 7 (which depends from independent claim 1) is allowable as a matter of law for at least the reason that dependent claim 7 contains all the steps/features of independent claim 1. *See In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988). Accordingly, the rejection of claim 7 is improper and should be withdrawn.

f. Claim 12

Applicant asserts that the rejection is improper because independent claim 11 is allowable over the prior art of record, and therefore, dependent claim 12 (which depends from independent claim 11) is allowable as a matter of law for at least the reason that dependent claim 12 contains all the elements/features of independent claim 11. *See In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988). Additionally and notwithstanding the foregoing reasons for allowability of independent claim 11, dependent claim 12 recites further features and/or combinations of

features (as is apparent by examination of the claim itself) that are patentably distinct from the prior art of record.

The element of “means for programming comprising a program for setting a time to activate the means for broadcasting,” as recited in claim 12, is not disclosed, taught, or suggested by either *Boys* or *Lowe*. Accordingly, the *Boys/Lowe* combination would not result in the claimed system. To the contrary, the *Lowe* reference teaches that the presence of a user triggers the transmission of information to a user’s headset or video display. See *Lowe* col. 3, lines 9-13; col. 4, lines 54-61. Accordingly, *Lowe* fails to suggest, disclose, or teach the feature for “setting a time to activate the means for broadcasting.” Hence, the *Boys/Lowe* combination simply would not result in Applicant’s claimed invention. Accordingly, the rejection of claim 12 is improper and should be withdrawn.

g. Claim 16

Applicant asserts that the rejection is improper because independent claim 11 is allowable over the prior art of record, and therefore, dependent claim 16 (which depends from independent claim 11) is allowable as a matter of law for at least the reason that dependent claim 16 contains all the elements/features of independent claim 11. See *In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988). Additionally and notwithstanding the foregoing reasons for allowability of independent claim 11, dependent claim 16 recites further features and/or combinations of features (as is apparent by examination of the claim itself) that are patentably distinct from the prior art of record.

The element of “means for storing received digital information for broadcasting at a later time,” as recited in claim 16, is not disclosed, taught, or suggested by either *Boys* or *Lowe*.

Accordingly, the *Boys/Lowe* combination would not result in the claimed system for at least the reason that the *Boys* and *Lowe* references fail to teach, suggest, or disclose the storing of digital information for later broadcasting. Rather, *Boys* mentions storing "Internet locations (URL's), and other temporary and some semi-permanent information such as . . . radio link locations," col. 7, lines 14 and *Lowe* mentions storing user preference data. See *Lowe*, col. 8, lines 24-28. Hence, the *Boys/Lowe* combination simply would not result in Applicant's claimed invention. Accordingly, the rejection of claim 16 is improper and should be withdrawn.

h. Claim 18

Applicant asserts that the rejection is improper because independent claim 17 is allowable over the prior art of record, dependent claim 18 (which depends from independent claim 17) is allowable as a matter of law for at least the reason that the dependent claim 18 contains all the steps/features of independent claim 17. See *In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988). Additionally and notwithstanding the foregoing reasons for allowability of independent claim 11, dependent claim 17 recites further features and/or combinations of features (as is apparent by examination of the claim itself) that are patentably distinct from the prior art of record.

The step of "storing the received digital information before converting the digital information to analog information," as recited in claim 17, is not disclosed, taught, or suggested by either *Boys* or *Lowe*. Accordingly, the *Boys/Lowe* combination would not result in the claimed method for at least the reason that the *Boys* and *Lowe* references fail to teach, suggest, or disclose the storing of digital information for later broadcasting. Rather, *Boys* mentions storing "Internet locations (URL's), and other temporary and some semi-permanent information such as

... radio link locations,” col. 7, lines 14 and *Lowe* mentions storing user preference data. See *Lowe*, col. 8, lines 24-28. Hence, the *Boys/Lowe* combination simply would not result in Applicant’s claimed invention. Accordingly, the rejection of claim 18 is improper and should be withdrawn.

i. Claim 21

Applicant asserts that the rejection is improper because independent claim 17 is allowable over the prior art of record, dependent claim 21 (which depends from independent claim 17) is allowable as a matter of law for at least the reason that dependent claim 21 contains all the steps/features of independent claim 17. See *In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988). Additionally and notwithstanding the foregoing reasons for allowability of independent claim 17, dependent claim 21 recites further features and/or combinations of features (as is apparent by examination of the claim itself) that are patentably distinct from the prior art of record.

The feature of “broadcasting the analog information is in at least one preselected amplitude modulated radio frequency,” as recited in claim 21, is not disclosed, taught, or suggested by either *Boys* or *Lowe*. Accordingly, the *Boys/Lowe* combination would not result in the claimed system. Moreover, both references teach away from broadcasting information using commercial frequency bands, such as FM or AM, for their respective systems. For example, *Lowe* specifically states that the “[u]se of the FM band outside the commercial (88-108 MHz) range is contemplated herein so as to avoid the possibility of commercial FM radio band interference.” Col. 7, lines 1-3. Likewise, *Boys* apparently contemplates utilizing AM/FM receiving capability in order to receive conventional broadcasts and not Internet broadcasts. Col.

13, lines 45-48. Hence, the *Boys/Lowe* combination simply would not result in Applicant's claimed invention. Accordingly, the rejection of claim 21 is improper and should be withdrawn.

6. Response to Rejection of Claims 14-15 Under 35 U.S.C. § 103(a)

Claims 14-15 have been rejected under 35 U.S.C. § 103(a) as being purportedly unpatentable over *Boys* in view of *Dao* (U.S. Patent No. 5,915,207). It is well established at law that, for a proper rejection of a claim under 35 U.S.C. § 103 as being obvious based upon a combination of references, the cited combination of references must disclose, teach, or suggest, either implicitly, all elements/features/steps of the claim at issue. See, e.g., *In re Dow Chemical*, 5 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1988); *In re Keller*, 208 U.S.P.Q.2d 871, 881 (C.C.P.A. 1981).

For a proper rejection under 35 U.S.C. § 103, both the suggestion to combine the combination of references and the expectation of success of the combination must be found in the prior art, not in the Applicant's disclosure. See *In re Dow Chemical Co.*, 837 F.2d 469, 473, 5 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1988). There is no suggestion anywhere in the prior art of record to combine the teachings of the cited references. Simply put, the Official Action has used Applicant's disclosure as a template or instruction manual to combine the references in order to fabricate the combination.

Irrespective of the clear lack of motivation to combine the prior art references, Applicant asserts that the rejection is improper because independent claim 11 is allowable over the prior art of record, and therefore dependent claims 14-15 (which depend from independent claim 11) are allowable as a matter of law for at least the reason that the dependent claims 14-15 contain all the

elements/features of independent claim 11. Accordingly, the rejections of claims 14-15 are improper and should be withdrawn.

CONCLUSION

For at least the foregoing reasons, all rejections and objections have been rendered moot, accommodated, and/or traversed, and Applicant respectfully request that all outstanding rejections be withdrawn and that all pending claims 1-7, 9-19, and 21-24 of this application be allowed to issue. If the Examiner has any comments regarding Applicant's response or intends to dispose of this matter in a manner other than a notice of allowance, Applicant requests that the Examiner telephone Applicant's undersigned agent.

Respectfully submitted,

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ANNOTATED VERSION OF MODIFIED CLAIMS TO SHOW CHANGES MADE

The following is a marked up version of the amended claims, wherein brackets denote deletions and underlining denotes additions.

1 1. (Twice Amended) A method for receiving digital information and transmitting the
2 information in a localized area, comprising the steps of:
3 receiving an audio communication as digital information from a remote source via the
4 Internet;
5 converting the digital information to analog information;
6 broadcasting the analog information at low power in a localized area in at least one
7 preselected radio frequency chosen by a user; and
8 receiving the broadcast information in the localized area on a radio frequency receiver
9 tuned to at least one frequency to permit listening to the audio communication.

1 11. (Twice Amended) An apparatus for receiving information and broadcasting the
2 information in a localized area, the apparatus comprising:
3 means for receiving digital information from a remote source via the Internet;
4 means for converting the digital information to analog information; and
5 means for broadcasting the analog information in a localized area in at least one
6 preselected radio frequency chosen by a user.

1 17. (Twice Amended) A method for receiving digital information and transmitting the
2 information in a localized area, the [system] method comprising the steps of:
3 receiving digital information from a remote source via the Internet;
4 converting the digital information to analog information;
5 broadcasting the analog information in a localized area in at least one preselected
6 frequency modulated radio frequency chosen by a user.

1 21. (Once Amended) The method of claim 17, [wherein] further comprising the step of :
2 broadcasting the analog information in at least one preselected amplitude modulated
3 radio frequency.